

LETTER OPINION
2005-L-09

February 17, 2005

Mr. T. L. Secrest
Adams County State's Attorney
PO Box 430
Hettinger, ND 58639

Dear Mr. Secrest:

Thank you for asking whether a state's attorney may appoint an assistant state's attorney who is not a resident of either the county or the state of North Dakota, but who is licensed to practice law in North Dakota. As discussed below, it is my opinion a state's attorney may appoint a nonresident as an assistant state's attorney if the assistant is licensed to practice law in North Dakota.

ANALYSIS

Section 11-16-02, N.D.C.C., allows a state's attorney to appoint "assistant state's attorneys, who, when qualified by filing the required oath of office, shall have the same powers as, and shall perform any and all duties required of, the state's attorney." In interpreting that statute, this office has previously stated that "no residency or qualified elector status is required for [an assistant state's attorney] to perform all of the duties of a state's attorney." N.D.A.G. 2002-L-67 (citing State v. Rodman, 221 N.W. 25 (N.D. 1928)).

That Attorney General's opinion focused on county residency, however, and did not specifically address North Dakota residency. And while Rodman did state that an assistant state's attorney was not required to be a resident of the county, it also stated an assistant state's attorney was required to be a resident of the state because state residency was a qualification to be an attorney. Rodman at 27.

In 1928, when Rodman was issued, only North Dakota residents were permitted to become licensed to practice law. Comp. Laws 1913, § 790. Rodman does not require the same conclusion today. North Dakota residency is no longer required to become licensed to practice law. See Admission to Practice R. 1; N.D.C.C. ch. 27-11. I can locate no other statute that could be read to require an assistant state's attorney to be a resident of North Dakota. Accordingly, it is my opinion a state's attorney may appoint a nonresident as an assistant state's attorney if the assistant is licensed to practice law in North Dakota.

LETTER OPINION 2005-L-09
February 17, 2005
Page 2

Sincerely,

Wayne Stenehjem
Attorney General

sam/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).